

# Wisconsin Consumer Protection Laws

## Unfair Business Practices

### ***UNFAIR BUSINESS PRACTICES***

Wisconsin Statutes section 100.20 (enacted in 1921), broadly prohibits unfair business practices and methods of competition. This law, which is modeled after the Federal Trade Commission Act, is the cornerstone of Wisconsin's general consumer protection program. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers the law as Wisconsin's equivalent of the Federal Trade Commission. DATCP may prohibit business practices that it determines to be unfair, and may prescribe fair practices.

- DATCP may prohibit unfair business practices by rule (general order). DATCP may also issue special orders prohibiting unfair practices by individual named businesses.
- DATCP has adopted rules related to the following subjects, among others:
  - Telecommunications and Cable TV Services (ATCP 123)
  - Telemarketing (ATCP 127)
  - Landlord-Tenant Practices (ATCP 134)
  - Mail and E-Mail Solicitations (ATCP 127)
  - Home Improvement Practices (ATCP 110)
  - Motor Vehicle Repair (ATCP 134)
  - Itinerant Sales (ATCP 127)
  - Fair Packaging and Labeling (ATCP 90)
  - Price Comparison Advertising (ATCP 124)
  - Work Recruitment Schemes (ATCP 116)
  - Mobile Home Parks (ATCP 125)
  - Pyramid Schemes (ATCP 122)
  - Referral Selling Plans (ATCP 121)
  - Coupon Sales Promotions (ATCP 131)
  - Gasoline Advertising (ATCP 113)
  - Freezer Meat and Food Service Plans (ATCP 109)
  - Basement Waterproofing Practices (ATCP 128)
  - Environmental Labeling of Products (ATCP 137)
  - rBST Labeling of Dairy Products (ATCP 83)
  - Art Fraud (ATCP 117)
  - Academic Fraud (ATCP 128)
- DATCP, with the help of the Department of Justice and district attorneys, may prosecute persons who violate DATCP rules and special orders (see Wisconsin Statutes sections 100.20(6) and 100.26). DATCP may seek injunctions, restitution,

civil forfeitures of up to \$10,000 per violation, and criminal penalties of up to \$5,000 and a year in jail.

- Consumers who suffer a monetary loss because of a violation of a DATCP rule or special order may sue the violator directly, and may recover *twice the amount of the loss*, together with costs and attorney fees. See Wisconsin Statutes section 100.20(5).
- For a discussion of the concept of unfairness, see *In re Petition of State ex rel Attorney General*, 220 Wis. 25 (1936); *FTC v. Sperry and Hutchinson Co.*, 405 U.S. 233 (1972); and *FTC v. R.F. Keppel & Bros.*, 291 U.S. 304 (1934). DATCP may act against unfair business practices that threaten consumers or competition, or both. Unfair practices may include, for example, deceptive or monopoly practices.
- DATCP's authority to prohibit unfair practices has been upheld as a valid delegation of legislative power. See *State v. Lambert*, 68 Wis. 2d 523 (1975); *HM Distributors of Milwaukee, Inc. v. Department of Agric.*, 55 Wis. 2d 261 (1972); *State v. Texaco, Inc.*, 14 Wis. 2d 625 (1961); and *Ritholz v. Ammon*, 240 Wis. 578 (1942).
- Wisconsin Statutes section 100.20 applies to "business" as defined in Wisconsin Statutes section 93.01(1m). "Business" includes *any* business, except that of banks, savings and loan associations or insurance companies (when engaged in banking, savings and loan or insurance activities). "Business" includes, with some exceptions, the activities of public utilities and telecommunications carriers.